

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

LINDA M. KNIGHT,

Plaintiff,

CIV S-04-1777 GEB PAN

v.

JO ANNE B. BARNHART,
Commissioner of Social Security,

FINDINGS AND RECOMMENDATIONS

Defendant.

—oOo—

Plaintiff seeks attorney's fees under the Equal Access to Justice Act (EAJA), 28 U.S.C. § 2412, following this court's June 28, 2005, order remanding this action for further administrative proceedings pursuant to sentence six of 42 U.S.C. § 405(g). The petition is premature as there is yet no final judgment nor prevailing party as required by 28 U.S.C. § 2412(d)(1)(A) and (B). The court is therefore without jurisdiction to consider plaintiff's petition. See Scanlon v. Sullivan, 974 F.2d 107, 108

1 (9th Cir. 1992); and Flores v. Shalala, 49 F.3d 562, 569 (9th
2 Cir. 1995) (citing Melkonyan v. Sullivan, 501 U.S. 89, 111 S.Ct.
3 2157 (1991), and Shalala v. Schaefer, 509 U.S. 292, 113 S.Ct.
4 2625 (1993)).

5 Accordingly, plaintiff's petition should be dismissed.

6 These findings and recommendations are submitted to the
7 Honorable Garland E. Burrell, Jr., the United States District
8 Judge assigned to this case. 28 U.S.C. § 636(b)(1). Written
9 objections may be filed within ten days after being served with
10 these findings and recommendations. The document should be
11 captioned "Objections to Magistrate Judge's Findings and
12 Recommendations." The failure to file objections within the
13 specified time may waive the right to appeal the District Court's
14 order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

15 Dated: August 15, 2005.

16 /s/ Peter A. Nowinski
17 PETER A. NOWINSKI
18 Magistrate Judge
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